In the Supreme Court of the United States

KING COUNTY, a municipal corporation, RALPH S. STACY, as Treasurer of King County, and ROY B. MISENER, as Assessor of King County,

Petitioners,

vs.

W. J. LAKE & COMPANY, INC., a corporation,

Respondent.

October Term, 1940

PETITION AND BRIEF

No. 574

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

KING COUNTY, a municipal corporation, RALPH S. STACY, as Treasurer of King County, and ROY B. MISENER, as Assessor of King County, Petitioners, vs. W. J. LAKE & COMPANY, INC., a corporation, Respondent.	October Term, 1940 PETITION No.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

King County, a municipal corporation of the State of Washington, Ralph S. Stacy, as Treasurer of King County, and Roy B. Misener, an Assessor of King County, pray that a Writ of Certiorari issue to review the judgment—by a divided court—of the Supreme Court of the State of Washington affirming a judgment of the Superior Court of the State of Washington for King County.

SUMMARY STATEMENT OF MATTER INVOLVED

Certain liquor, the property of W. J. Lake & Company, held in a storage warehouse in Seattle, Washington, on March 1, 1935 and March 1, 1936, was assessed for ad valorem taxation for those years (R. 1, 6, 19, 20). The Lake Company brought action to enjoin the

collection of the tax levied upon the property, upon the ground that the liquor was moving in interstate commerce and was immune from state taxation under Article I, § 8, of the Constitution of the United States (R. 2, 7).

The liquor had been purchased by the Lake Company from distillers located outside the State of Washington. The liquor was brought to Seattle to be distributed, principally to buyers in Alaska, Utah, Idaho, and Montana (R. 14, 15). At the time of the arrival of the liquor in Seattle, the Lake Company had orders for approximately 85 to 90% of the liquor. An over-burden of 10 to 15% was brought in for use in filling orders subsequently obtained (R. 15, 16). Ordinarily the liquor remained in storage for a period of not more than a month or six weeks. Liquor was never stored for longer than six months (R. 16). The shipments coming to Seattle were divided and reshipped to various buyers outside the State (R. 15).

When the liquor was shipped out of Seattle, the destination was stenciled on the boxes (R. 32). While in storage at Seattle, the liquor was segregated according to brand (R. 31).

Under statutes of the State of Washington, the Lake Company was prohibited from selling liquor for local consumption unless the same was sold to the

Washington State Liquor Control Board. However, sales were made to the officers' headquarters at the Bremerton Navy Yard (a government reservation) and to ships' stores in the harbor of Seattle, and to other liquor distributors (R. 22, 23, 25, 47, 62, 63). This was permitted on the ground that the liquor would be consumed in a place beyond the jurisdiction of the State. Seattle was a convenient point for the distribution of the liquor to be sent to Alaska, Utah, Idaho, and Montana (R. 37). On at least one occasion liquor intended for interstate sale, was sold to the Washington State Liquor Control Board (R. 57). The respondent has a wholesale liquor dealers' license from the State of Washington (R. 49). A great number of sales were made at Seattle to other liquor distributors who would ship the liquor out of the State (R. 22, 23, 54, 55, 56, 57, 58).

The majority opinion of the Supreme Court of the State of Washington holds that the liquor was moving in interstate commerce and was beyond the taxing power of the State. Chief Justice Blake, in his dissent, adopts the view that the Federal constitution does not extend exclusive Federal control over the type of transit here involved. The decision of the Supreme Court of Washington is reported in 103 Wash. Dec. 430, 101 Pac. 2nd 357.

JURISDICTION

1. The statutory provision which sustains the jurisdiction of this court is Judicial Code, Section 237 (b), as amended by the act of February 13, 1935, c. 229, § 1, 43 Stat. 937, 28 U. S. C. A. § 344 (b).

2. The applicable rule of this court is Rule 38, 5 (a).

3. The statute of the State of Washington, the validity of which is involved, is Chapter 19 of the Laws of Washington 1933, Ex. Sess., amending Chapter CXXIV of the Codification of Laws of Washington 1893, known as Remington Revised Statutes of Washington § 11111, providing in part:

> "All real and personal property now existing or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation for state, county and other taxing district purposes as provided by law, upon equalized valuations thereof, fixed with reference there to on the first day of March at 12 o'clock meridian, in each and every year in which the same shall be listed, except as hereinafter provided."

The remaining portions of the statute relate to exemptions from taxation, which are not pertinent here.

4. Cases believed to sustain the jurisdiction are:

Minnesota v. Blasius, 290 U. S. 1, 10, 54 S. Ct. 34, 78 L. ed. 131;

Hughes Bros. Co. v. Minn. 272 U. S. 469, 476, 47 S. Ct. 192, 71 L. ed. 362;

Carson Pet. Co. v. Vial, 279 U. S. 95, 49 S. Ct. 292, 73 L. ed. 626;

Gen. Oil Co. v. Crain, 209 U. S. 211, 28 S. Ct. 475, 52 L. ed. 754;

Bacon v. Illinois, 227 U. S. 504, 33 S. Ct. 299, 57 L. ed. 615;

Susquehanna Coal Co. v. South Amboy, 228 U. S. 665, 33 S. Ct. 712, 57 L. ed. 1015.

5. The judgment of the Supreme Court of Washington was entered August 14, 1940. This petition is docketed prior to November 14, 1940.

The decision of the Supreme Court of Washington was announced April 17, 1940.

A petition for rehearing was filed May 15, 1940 within the time allowed by Rule XXII of the Washington Supreme Court.

This petition was denied June 12, 1940, but no judgment was entered because the court had under advisement the matter of costs.

The opinion of the court on the awarding of costs was announced July 26, 1940 and judgment entered on August 14, 1940.

Under *Puget Sound Power & Light Co. v. King County,* 264 U. S. 22; 68 L. ed. 541; 44 S. Ct. 261, the time for filing a petition for certiorari does not begin to run until the judgment is entered by the Supreme Court of Washington.

6. The essential question in the case is whether the liquor assessed for taxation for 1935 and 1936 was moving in interstate commerce so as to be beyond the taxing power of the State. This is clearly demonstrated by the following:

With reference to the 1935 tax it is alleged by the respondent's complaint:

> "That said plaintiff is a broker, and had purchased said liquors in various states other than the State of Washington, for sale in interstate commerce, it being illegal to sell said liquors in the State of Washington then and at all times since the purchase thereof; that said liquors were purchased for the purpose of export and were in transit to Alaska and Idaho in interstate commerce at the time of said assessment, and said assessment was illegal and void, and said Assessor had no right to make said assessment and the said Treasurer has no right or authority to assess any tax against plaintiff or against said liquors." (R. 2).

With reference to the 1936 tax it is alleged by the respondent's complaint:

> "That said Plaintiff is a broker, and had purchased said merchandise at various places and in various states other than the State of Washington, for sale in interstate commerce; that said merchandise was purchased for the purpose of export and was in transit to Alaska and Idaho and other states in interstate commerce at the time of said assessment and levy, and said assessments and levies were and are illegal, unlawful, excessive and void, and said Assessor had no right to make said assessments and the

> said Treasurer has and had no right or authority to assess or levy any tax against plaintiff or against said merchandise." (R. 6, 7).

The trial judge, in his Oral Decision, stated:

> "I am persuaded that all they are doing here is standing in the stream of interstate commerce between the buyers in one state and the seller in another, and vice versa, and it is essentially interstate commerce." (R. 68).

The majority of the Supreme Court of Washington, in its decision, said:

> "The taxability of the liquor was dependent on whether, while held in storage for transshipment without the state, its movement in the flow of interstate commerce had ceased and it had become part of the general mass of property within the State." (R. 80).

Chief Justice Blake, in his dissent, said:

> "As I see it, the only ground upon which the respondent could legally escape the taxes levied by King County would be upon the theory that the liquor was moving in interstate commerce. But property brought into this state and stored with the intention of resale out of the state cannot escape taxation on the theory that it is moving in interstate commerce." (R. 84).

QUESTIONS PRESENTED

1. Whether liquor purchased outside of the State of Washington and brought to Seattle principally for distribution in Alaska, Utah, Idaho, and Montana, is non-taxable by the State of Washington where 10 to 15% of the liquor was purchased to fill subsequent

orders; where the liquor ordinarily remained in storage not longer than six weeks; where some of the liquor was diverted to ships' stores at Seattle; where some was sold to the officers' headquarters in the Bremerton Navy Yard (a government reservation within the State of Washington); and where same was sold at Seattle to other distributors for shipment outside the State?

2. Where the State law forbids the sale of liquor within the State to all except the State Liquor Board (which enjoys a monopoly) or to Government reservations or to ships engaged in coastal, foreign or Alaskan trade, do the State restrictions on local sale place such liquor beyond the taxing power of the State as moving in interstate commerce?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The judgment and decision of which review is sought holds that since the liquor brought into the State of Washington could not legally be sold within the State (except to the Washington State Liquor Board, to Government reservations, to ships' stores, or to other dealers for shipment outside the State) the merchandise was in interstate commerce. It is not pretended that this property was exempted from taxation under any statute.

The statutory law of Washington provided for the taxation of all real and personal property within the State on March 1, 1935 and March 1, 1936 (Chapter 19, Laws of Washington 1933, Ex. Sess., Rem. Rev. Stat. § 11111). The liquor was purchased principally to fill orders obtained or to be obtained in Alaska, Utah, Idaho and Montana (R. 14, 15). It was brought to Seattle, placed in storage, and divided up for delivery to customers (R. 15). When put in storage, the liquor was segregated according to particular type (R. 31). On numerous occasions other liquor brokers ran short of particular brands and the respondent would sell to the other dealers sufficient liquor to care for their needs. Such dealers would pay the respondent for this liquor and later ship the same outside of the State (R. 22, 23). Occasional sales were made to the officers' headquarters in the Bremerton Navy Yard and to ships' stores at Seattle (R. 62, 63). These were permitted under the state law because the liquor was not consumed at a place under the jurisdiction of State authorities. On at least one occasion liquor was sold to the Washington State Liquor Board (R. 57).

A recitation of these facts indicates that the respondent was doing business within the State of Washington and that there was no such a commerce as is protected by Article I, § 8, of the United States constitution.

The Washington Supreme Court has thus decided a Federal question of substance in a way not in accord with the applicable decisions of the Supreme Court of the United States.

If it be thought that the provisions of the Washington statutes, forbidding the sale to any one except the restricted class enumerated, enlarges the ground upon which an interstate commerce may be claimed, it is submitted that the question is one not heretofore determined by the Supreme Court of the United States.

It is respectfully submitted that the cause should be reviewed by this court and the writ of certiorari issued.

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